

Exhibit A

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

14 OAKS ASSOCIATES, LLC)	
)	
Plaintiff,)	
)	
v.)	Cause No.
)	
K MART CORPORATION,)	Division
)	
<u>Serve:</u> CT Corporation System)	
120 South Central Avenue)	
St. Louis, Missouri 63105)	
)	
Defendant.)	

PETITION

COMES NOW Plaintiff 14 Oaks Associates, LLC (“Plaintiff”), by and through its undersigned counsel, and for its Petition against Defendant K Mart Corporation (“Defendant”), states as follows:

Parties

1. Plaintiff is a foreign limited liability company organized and existing pursuant to the laws of the State of California, which is registered to do business in the State of Missouri.
2. Defendant is a foreign corporation organized and existing pursuant to the laws of the State of Illinois, which has registered to do business in the State of Missouri.

Jurisdiction and Venue

3. This Court has jurisdiction over this action and over Defendant because Defendant conducts business in Missouri.
4. Venue in this Court is proper in this Court because the lease which is the subject matter of this action was entered into in St. Louis City and because the cause of action arose in St. Louis City.

Factual Background

5. On or about November 30, 1990, Defendant entered into a valid Lease (together with any amendments or modifications thereto, the “Lease,” attached hereto as **Exhibit 1**) with St. Louis Market Place Limited Partnership (“SLMP”) as the Landlord, to lease property located at 6650 Manchester, St. Louis, Missouri 63110 (the “Property”).

6. In or about July 2005, Plaintiff purchased the St. Louis Market Place plaza, including the Kmart parcel, and became the Landlord under the Lease.

7. Pursuant to the Lease, the extended term was scheduled to expire on August 31, 2017, with a lease renewal notice deadline of February 28, 2017.

8. On January 27, 2017, Defendant informed Plaintiff by letter that it would discontinue operations at the Property.

9. On February 7, 2017, Plaintiff sent to Defendant its Pre-Termination Letter, which set forth certain expectations in preparation for the termination of the Lease on August 31, 2017.

10. The Pre-Termination Letter references Article 31 of the Lease, which requires Defendant to “. . . surrender the demised premises, together with alterations, additions and improvements then a part thereof, in good order and condition . . .”

11. On March 28, 2017, Plaintiff emailed Defendant that it “recently became aware that [Defendant] closed its doors this past Sunday, March 27, 2017. We have not received any response to our emails or letter we sent on February 7th. We would like to make sure that the building is secure and would like to discuss the turnover of the property. Please give us a call at your earliest convenience so we can discuss these issues immediately.”

12. As a result of Defendant's cessation of operations at the Property and pending lease termination, Plaintiff conducted routine exterior inspection of the Property and requested interior inspection of the Property.

13. Based on its interior and exterior inspection, Plaintiff identified a number of items that were not in good order and condition that needed to be repaired or replaced by Defendant pursuant to its obligations under the Lease.

14. Among these items were twelve HVAC units on the roof of the building, missing sprinkler heads located in the Old Little Caesars area and a leaking backflow.

15. In the Spring of 2017, Plaintiff provided Defendant with a report on the condition of the rooftop HVAC units and provided a quote to repair and/or replace the units.

16. On August 29, 2017, Defendant emailed Plaintiff agreeing to pay the cost of repair for two HVAC units, at a cost of \$23,959.77, and the sprinklers in the former Little Caesar's area at a cost of \$7,947.00.

17. Despite Defendant's August 29, 2017 email, to date, Defendant has not repaired or replaced the two HVAC units or the sprinklers, or submitted payment for same to Plaintiff.

18. On September 21, 2017, after conducting a final walk through of the Property, Plaintiff sent Defendant a letter identifying specific maintenance that still needed to be addressed by Defendant prior to surrender to meet the requirements of the Lease. Among these items included the replacement of the HVAC units, installing missing sprinkler heads, and repair the leaking backflow.

19. Despite Plaintiff's September 21, 2017 letter, Defendant has not repaired or replaced the items identified in the letter nor paid any monies to Plaintiff to do the work.

20. On November 13, 2017, Plaintiff made a demand upon Defendant for amounts owed under the Lease, consisting of the following:

- a. \$157,670.04 to replace the twelve HVAC units;
- b. \$7,947 to replace the sprinklers; and
- c. \$410.00 for the amount Plaintiff incurred to repair the backflow.

21. The total amount owed by Defendant to Plaintiff is \$166,027.04.

22. Despite demand and its obligations under the Lease, Defendant has not paid Plaintiff any of the amounts owed, nor has Defendant made any of the required repairs, and is therefore in breach of the Lease.

COUNT I
Breach of Lease

23. Plaintiff adopts and incorporates by reference paragraphs 1 through 22 hereof as if fully set forth herein.

24. Plaintiff has fully performed its obligations pursuant to the Lease.

25. Defendant has failed to perform its obligations pursuant to the Leases as cited herein, and therefore is in breach of the Lease.

26. As a result, Plaintiff has been damaged in an amount not less than \$166,027.04.

WHEREFORE, Plaintiff 14 Oaks Associates, LLC respectfully requests that the Court enter Judgment in its favor and against Defendant K Mart Corporation for \$166,027.04; prejudgment and post judgment interest at the maximum legal rate; for its costs incurred herein; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Sarah J. Klebolt
Sarah J. Klebolt, #60849
Stephen G. Davis, #63776
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
(314) 854-8600
(314) 854-8660 (Facsimile)
sjk@carmodymacdonald.com
sgd@carmodymacdonald.com


Attorneys for Plaintiff 14 Oaks Associates, LLC



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1722-CC11927	Special Process Server 1 Special Process Server 2 Special Process Server 3 (Date File Stamp)
Plaintiff/Petitioner: 14 OAKS ASSOCIATES LLC	Plaintiff's/Petitioner's Attorney/Address Sarah Klebolt SUITE 1800 120 S. CENTRAL AVE SAINT LOUIS, MO 63105	
Defendant/Respondent: K MART CORPORATION	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
Nature of Suit: CC Breach of Contract		

Summons in Civil Case

The State of Missouri to: K MART CORPORATION Alias: CT CORPORATION SYTEM 120 S CENTRAL AVENUE CLAYTON, MO 63105	ST LOUIS COUNTY
 <p>COURT SEAL OF CITY OF ST LOUIS</p>	<p>You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.</p> <p>December 12, 2017</p> <p>_____ Date</p> <p>_____ Clerk</p>
Further Information:	

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____
Date Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1722-CC11927	Special Process Server 1
Plaintiff/Petitioner: 14 OAKS ASSOCIATES LLC	Plaintiff's/Petitioner's Attorney/Address Sarah Klebolt SUITE 1800 120 S CENTRAL AVE SAINT LOUIS, MO 63105	Special Process Server 2
Defendant/Respondent: K MART CORPORATION	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Special Process Server 3
Nature of Suit: CC Breach of Contract		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: K MART CORPORATION

Alias:

CT CORPORATION SYTEM
120 S CENTRAL AVENUE
CLAYTON, MO 63105

ST LOUIS COUNTY

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

December 12, 2017

Date

Clerk

Further Information:

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☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

LAW-A. BRANDON

(name)

REPRESENTATIVE

(title)

☐ other

Served at

CT CORP

(address)

in

ST. LOUIS

(County/City of St. Louis), MO, on

12/20/17

(date) at

900AM

(time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees

Summons

\$

Non Est

\$

Sheriff's Deputy Salary

Supplemental Surcharge

\$

10.00

Mileage

\$

(_____ miles @ \$._____ per mile)

Total

\$

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

14 OAKS ASSOCIATES, LLC)
) Cause No.: 1722-CC11927
Plaintiff,)
) Division: 1
v.)
)
K MART CORPORATION,)
)
Defendant.)

ENTRY OF APPEARANCE

COMES NOW Stephen G. Davis of the law firm of Carmody MacDonald P.C. and hereby enters his appearance on behalf of Plaintiff 14 Oaks Associates, LLC in the above-captioned matter.

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Stephen G. Davis
Sarah J. Klebolt, #60849
Stephen G. Davis, #63776
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
(314) 854-8600
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sjk@carmodymacdonald.com
sgd@carmodymacdonald.com

Attorneys for Plaintiff 14 Oaks Associates, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2017 the above and foregoing pleading was filed electronically with the City of St. Louis Circuit Clerk's office by using the Missouri Electronic Document Management System which will send a notice of electronic filing to all counsel of record.

/s/ Stephen G. Davis